

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

Criminal No. 99-79-P-C

AMADO LOPEZ a/k/a LUIS,
RENALDO LOPEZ a/k/a RICHIE,
ENRIQUE MELENDEZ a/k/a KIRIKIRI,
a/k/a KIKI,
PAUL W. MOUNTS,
EFRAIN SANTANA,
LUIS DELHOYO a/k/a LOCO,
HEIDI A. CHAFFEE,
EDWIN VEGA,
WENDALL CASLER,
ROBERT L. DALL,
JAMES W. DALL,
KIRK OWEN,
NINA PYE,
JAMES R. RIGGS, JR.,
DONALD A. SMITH a/k/a SONNY,
LAURIE SMITH,
ANTHONY C. STILKEY, II,
JENNIFER C. STILKEY,

Defendants

GENE CARTER, District Judge

MEMORANDUM OF DECISION

On November 17, 1999, Chief Judge Hornby, in response to the Government's Application for Interception of Wire Communications ("the Application") (attached as Exhibit 1A to Government's Consolidated Objections to Defendants' Motions and Incorporated Memorandum of Law ("Government's Objections") (Docket No. 151)), issued an Order Authorizing the Interception of Wire Communications ("the Order") (attached as Exhibit 1C to Government's Objections). The Order was issued pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510 *et seq.* ("Title III"). The Government

sought this wiretap as part of its investigation of an alleged drug distribution conspiracy. The fruits of that investigation led to this criminal indictment. Several Defendants filed motions to suppress (collectively “Defendants’ Motions”) the wire intercepts made pursuant to the Order. Defendants’ Motions raise various issues, including Defendants’ contention that the Application and the Order failed to comply with the necessity requirements of Title III. With respect to this particular issue, Defendant Melendez in his Motion (Docket No. 127) sought an evidentiary hearing, pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674 (1978), to permit Defendants to examine Drug Enforcement Administration Special Agent Brian Boyle regarding the contents of his affidavit (“the Boyle Affidavit” or “the Affidavit”) which is the basis upon which the Government’s Application rests. After hearing oral argument, the Court denied Defendant Melendez’s Motion for a *Franks* hearing. This Memorandum of Decision sets forth the legal grounds upon which the Court denied the Motion.

In *Franks*, the Supreme Court set forth the conditions under which a defendant was entitled to an evidentiary hearing to examine the veracity of an affidavit that had been the basis upon which a search warrant had been issued. *Franks*, 438 U.S. at 168, 98 S. Ct. at 2682. Such a hearing, if warranted, is known as a *Franks* hearing. The Supreme Court set forth the prerequisites for a *Franks* hearing as follows:

To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant. Finally, if these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required

Id. at 171-72, 98 S. Ct. at 2684-85 (footnote omitted). Although *Franks* dealt with a challenge to an affidavit in support of a search warrant application, the Court of Appeals for the First Circuit has established that the principles of *Franks* apply equally to an affidavit in support of a wiretap application. *U.S. v. Southard*, 700 F.2d 1, 7 (1st Cir.), *cert. denied*, 464 U.S. 823, 104 S. Ct. 89 (1983).

The Court denied Defendants' request for a *Franks* hearing because Defendants failed to point out any specific portion of the Affidavit that contained a deliberate falsehood or demonstrated reckless disregard for the truth. While Defendants did identify several lengthy temporal gaps in the Affidavit's recitation of the investigation, Defendants failed to make any offer of proof as to what did or did not transpire during those gaps. Because Defendants failed to present the Court with specific "allegations of deliberate falsehood or of reckless disregard for the truth" contained in the Affidavit, and because Defendants made no offer of proof as to such allegations, the Court denied the Motion for a *Franks* hearing. *Franks*, 438 U.S. at 171-72, 98 S. Ct. at 2684-85.

GENE CARTER
District Judge

Dated at Portland, Maine this 28th day of April, 2000.

U.S. District Court
District of Maine (Portland)

CRIMINAL DOCKET FOR CASE #: 99-CR-79-ALL

USA v. LOPEZ, et al

Filed: 12/15/99

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